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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. TRINIDAD BERRERA ANDRADE, Defendant and Appellant.	A106683 (Mendocino County Super. Ct. No. SCUKCRCR04-58194-2)

Defendant Trinidad Berrera Andrade appeals from the judgment following his no contest plea to possession for sale of methamphetamine (Health & Saf. Code, § 11378) while armed with a firearm (Pen. Code, § 12022, subd. (c)). Defendant challenges the denial of his preplea motion to suppress. We affirm.

I. BACKGROUND

Around noon on January 2, 2004, Deputy Sheriff Jacklyn Rainwater was alone on patrol of the Carousel Business Park and Storage Units. She was in uniform. The sheriff's department had been asked to do extra patrols because a lot of burglaries had been reported in the storage units in the area. She noticed one of the storage unit doors propped open by a small blue container. The opening to the door was faced away from her. She considered the open door suspicious because there were no vehicles around, and she was aware that there had been reports of burglaries. She was also aware that people sometimes live out of storage units, and that drug activities may take place there. Rainwater called dispatch, then approached the storage unit. On direct examination at the suppression hearing, Rainwater testified: "I . . . got out of my patrol vehicle, opened the

door, and there was a gentleman inside, Mr. Andrade, sitting on a mattress with several things laying around him on the mattress." Those things included food, alcohol, and a heating lantern. On cross-examination she testified that she called out, "Hello, sheriff's office, anybody inside?" She continued: "Basically, as you're walking around, the door is propped open, and I could see him, and he could see me as well."

Rainwater asked defendant what he was doing, and he told her he "wasn't really doing anything." She asked if the storage unit belonged to him, and he replied that it belonged to a friend of his by the name of Joline. Rainwater asked defendant if Joline was around, and he replied that she might be around somewhere. Defendant was acting nervous and not answering the questions in a straightforward manner. Rainwater testified, "After that, I asked him if he would come outside and talk to me so that I could just verify some information. I explained to him why I was there, why I was patrolling the area. And if he would just come out and talk to me, maybe show me some identification so that I could, you know, document this in case something came up down the road." Defendant came outside and told Rainwater his name. Rainwater asked if he could provide identification, and he did so cooperatively. Defendant was acting in a fidgety, nervous manner, and kept putting his hands in and out of his pockets, backing away from Rainwater. This behavior made Rainwater nervous because she did not know if he had any weapons, and she asked him not to put his hands in his pockets. Defendant continued to put his hands in his pockets. Rainwater testified: "[S]o I asked him if he minded because of officer safety reasons if I patted him down. And I'd like to pat him down just to basically make sure he didn't have any weapons on him, and then he could put his hands in his pockets." Defendant agreed.

Rainwater felt a hard cylindrical object in defendant's jacket pocket and asked defendant what it was. He did not tell her. She told him she would check the item to make sure it was not a weapon. It was a glass methamphetamine pipe. She asked defendant if the pipe was his, and he told her it was. She asked when he had last used methamphetamine, and he told her he had used it the previous day. Rainwater testified: "I detained him at that point. I told him that I was going to detain him to finish searching

him." Her search revealed several individual baggies that she believed to contain methamphetamine.

Rainwater placed defendant under arrest. Another deputy sheriff, Erick Riboli, arrived. He asked defendant if he was allowed to be in the unit, and asked him for consent to search the unit. Defendant told Riboli he could do so. Daren Brewster of the Mendocino Major Crimes Task Force arrived, and confirmed that defendant agreed to the search. The search revealed drug paraphernalia, suspected methamphetamine, a gun, scales, and packaging.

The trial court denied defendant's motion to suppress the evidence seized from defendant and the storage unit. The count found that the encounter outside the storage unit was "largely consensual although it was definitely part of a valid police investigation done for valid investigatory reasons," that defendant agreed to be patted down, and that there was cause to pat him down for officer safety reasons. The court also found the further search of defendant was valid and that defendant voluntarily consented to the search of the storage unit.

II. DISCUSSION

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]" (*People v. Glaser* (1995) 11 Cal.4th 354, 362; see *People v. Weaver* (2001) 26 Cal.4th 876, 924.)

A. Initial Encounter Between Defendant and Rainwater

Defendant contends the trial court erred in concluding his initial encounter with Rainwater was consensual. "Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty. [Citations.] . . . Unlike detentions, [consensual

encounters] require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*); see also *People v. Terrell* (1999) 69 Cal.App.4th 1246, 1253 (*Terrell*).) "[A] detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.] '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.] Circumstances establishing a seizure might include any of the following: the presence of several officers, an officer's display of a weapon, some physical touching of the person, or the use of language or of a tone of voice indicating that compliance with the officer's request might be compelled. [Citations.]" (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) The crucial test in determining whether a detention has occurred is not the location of the encounter, but whether, "taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' " (*Florida v. Bostick* (1991) 501 U.S. 429, 437.)

The court in *Manuel G.* found the record supported the juvenile court's determination that the encounter between the minor and police was consensual where the police officer stopped his patrol car and approached the minor, who kept walking toward him; the officer asked whether they could talk, and the minor responded to his questions. The officer did not draw his gun or deter or stop the minor from continuing what he was doing. (*Manuel G., supra*, 16 Cal.4th at p. 822.) Similarly, in *Terrell*, two officers

approached the defendant as he was sitting on a park bench, engaged him in a brief conversation, and asked if he had any identification. The defendant did not ask for his identification back, and neither of the officers indicated by words or conduct that the defendant was not free to leave. The court concluded that there was no basis for a reasonable inference that the encounter was a detention rather than a consensual encounter. (*Terrell*, *supra*, 69 Cal.App.4th at pp. 1251, 1254.) The court in *People v. Lopez* (1989) 212 Cal.App.3d 289 (*Lopez*) reached a similar conclusion. There, police officers who were patrolling for narcotics traffickers saw defendant, whom one of the officers recognized, sitting on the hood of a car. The officer asked the defendant if the car was his. He said it was not. The officer asked why he was sitting on the car, and he said he was waiting for some friends to play pool. The officer asked where the defendant's pool stick was, then asked him for identification; he handed them his wallet, which contained a substance that appeared to be cocaine. (*Id.* at p. 291.) The Court of Appeal concluded the officers did not need reasonable suspicion in order to ask questions or request identification, noting that their questions were brief and did not concern criminal activity, that the officers made no show of force or attempt to physically restrain the defendant, and that they did not order him to remain. (*Id.* at pp. 291, 293.) In reaching this conclusion, the court distinguished *Wilson v. Superior Court* (1983) 34 Cal.3d 777 (*Wilson*), in which officers had told the defendant they had received information that he would be arriving from Florida on that day carrying a lot of drugs; those statements, noted the court in *Lopez*, "were heavily accusatory and related to serious criminal conduct." (*Lopez*, *supra*, 212 Cal.App.3d at pp. 292-293, citing *Wilson*, *supra*, 34 Cal.3d at pp. 790-791.)

The evidence supports the trial court's conclusion that the initial encounter between defendant and Rainwater was voluntary. Rainwater asked defendant if he would come out and talk with her so she could verify some information, and he did so. She asked him for identification, and he produced it cooperatively. None of the factors mentioned in *Manuel G.* as indicating a seizure is present here: Rainwater was alone; and there is no indication she spoke to defendant commandingly, that she brandished a

weapon, that she physically restrained him, or that she indicated in any other way that she would compel him to comply with her requests. (See *Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Although it is true that Rainwater asked defendant to move outside the storage unit, the record indicates this was a request, rather than an order. (Compare *People v. Foranyic* (1998) 64 Cal.App.4th 186, 188 [detention occurred when officer ordered the defendant to get off his bicycle]; see also *People v. Bennett* (1998) 68 Cal.App.4th 396, 402-403 [contact consensual where officer spoke politely and applied no physical or verbal force in asking defendant whether he would mind waiting in back of police car]; *In re Gilbert R.* (1994) 25 Cal.App.4th 1121, 1124-1126 [no detention where minor and his mother agreed to have minor accompany detectives to police station].)

In the circumstances, the evidence supports the trial court's determination that the initial encounter between defendant and Rainwater was consensual.[1]

B. Opening Door of Storage Unit

Defendant contends that Rainwater made an unlawful warrantless entry into the storage unit when she opened the door of the unit.[2] This contention fails. The protection of the Fourth Amendment extends to searches and seizures of property from areas of business premises not open or visible to the public. (*People v. Lee* (1986) 186 Cal.App.3d 743, 750 (*Lee*).) However, " 'observations of things in plain sight made from a place where a police officer has a right to be do not amount to a search in the constitutional sense.' " (*People v. Camacho* (2000) 23 Cal.4th 824, 832 (*Camacho*).)

Defendant did not raise this issue below as a ground for his motion to suppress, either in his moving papers or in opposition to the prosecution's showing; and he is therefore barred from raising it on appeal. (See *People v. Williams* (1999) 20 Cal.4th 119, 135-136.) In fact, at the suppression hearing, defense counsel argued that the

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[1] Defendant does not challenge any actions of the deputies after the original encounter, including Rainwater's patsearch and the search of the storage unit.

[2] Defendant's contention seems to be limited to the fact that Rainwater saw him when she looked into the unit, not that she saw any of the other items that were later seized.

detention began when Rainwater confronted defendant inside the storage unit and asked him to remove himself.

Defendant acknowledges that he did not challenge Rainwater's actions on this basis at the suppression hearing, but argues that his trial counsel's failure to raise the issue constituted ineffective assistance of counsel. A claim of ineffective assistance of counsel will be upheld on appeal where "(1) counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel's representation subjected the defense to prejudice . . . . If the record sheds no light on why counsel acted or failed to act in the manner challenged, 'unless counsel was asked for an explanation and failed to provide one, *or unless there simply could be no satisfactory explanation*' [citation], the contention must be rejected." (*People v. Haskett* (1990) 52 Cal.3d 210, 248, italics added; see also *People v. Fosselman* (1983) 33 Cal.3d 572, 581-582.)

The record does not show there could be no satisfactory explanation for defense counsel's failure to raise Rainwater's initial opening of the storage unit door as a basis for suppression of the evidence. Defendant contends Rainwater did not see him until after she had opened the storage unit door, citing her testimony that while she was on patrol, she noticed that one of the storage unit doors was propped open slightly and was facing away from her so she could not see inside the unit, and that after she had called into dispatch, she opened the door of the unit and defendant was inside. However, Rainwater also testified on cross-examination: "Basically, as you're walking around, the door is propped open, and I could see him, and he could see me as well." This testimony suggests that when Rainwater walked around the door, she was able to see defendant from an area accessible to the public even before she opened the door further. (See *Camacho*, *supra*, 23 Cal.4th at p. 832; *Lee*, *supra*, 186 Cal.App.3d at p. 750.) Moreover, she never entered the storage unit. Defense counsel could well have concluded that there

was no basis to move to suppress the evidence on the ground that Rainwater's actions constituted a warrantless search.[3]

III. DISPOSITION

The judgment is affirmed.

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RIVERA, J.

We concur:

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REARDON, Acting P. J.

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SEPULVEDA, J.

[3] Because we reach this conclusion, we do not consider whether defendant had a reasonable expectation of privacy in the unit.